

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 KATHLEEN FREEMAN, ET. AL, 18-CV-7359 (PKC)
4 Plaintiff, United States Courthouse
5 - versus - Brooklyn, New York
6 HSBC HOLDINGS PLC, ET. AL, June 27, 2023
7 Defendant. 11:30 a.m.
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10 TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
11 (ALL PRESENT VIA VIDEOCONFERENCE)
12 BEFORE THE HONORABLE PAMELA K. CHEN
13 UNITED STATES DISTRICT JUDGE

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16 Proceedings recorded by mechanical stenography. Transcript
17 produced by computer-aided transcription.

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1 (In open court; all present via videoconference.)

2 THE COURTROOM DEPUTY: Civil cause for a status
3 conference, Docket 18-CV-7359, Freeman v. HSBC.

4 Before asking the party to state their appearances,
5 I would like to note the following: Persons granted remote
6 access to proceedings are reminded of the general prohibition
7 against photographing, recording, and rebroadcasting of court
8 proceeds. Violation of these prohibitions may result in
9 sanctions, including removal of court-issued media
10 credentials, restriction as to future hearings, denial of
11 entry to future hearings or any other sanctions deemed
12 necessary by the Court.

13 Will the parties please state their appearances for
14 the record; starting with the plaintiffs.

15 MR. OSEN: Good morning, your Honor.

16 This is Gary Osen from Osen LLC on before of the
17 Freeman 1, Freeman 2, and Bowman plaintiffs.

18 THE COURT: Good morning to you, Mr. Osen.

19 MR. CHAREST: Good morning, your Honor.

20 Daniel Charest from Burns and Charest on behalf of
21 the Stephens plaintiffs.

22 THE COURT: Good morning to you, Mr. Charest.

23 MR. CHAREST: Thank you.

24 MR. HANCHET: Good morning, your Honor.

25 Carmine Boccuzzi for defendant Commerzbank.

1 THE COURT: Good morning to you.

2 MR. HANCHET: Good morning, your Honor.

3 Mark Hanchet from Mayer Brown on behalf of the HSBC
4 defendants. With me is Robert Hamburg also from my firm.

5 THE COURT: And could you spell your name for me.

6 MR. HANCHET: Yes.

7 H-A-N-C-H-E-T.

8 THE COURT: And your colleague, sorry I missed that.

9 MR. HAMBURG: It is Robert Hamburg. H-A-M-B-U-R-G.

10 THE COURT: Good morning to both of you.

11 MR. HAMBURG: Good morning, your Honor.

12 MR. LAKATOS: Good morning, your Honor.

13 Alex Lakatos from Mayer Brown and Marc Cohen on
14 behalf of Credit Suisse. I will spell my last name. It's
15 L-A-K-A-T-O-S.

16 THE COURT: Okay. I see yours actually on the
17 screen.

18 Anyone else for defendants?

19 MR. TOMAINO: Yes, your Honor.

20 Good morning.

21 This is Michael Tomaino with Sullivan and Cromwell
22 for defendants Barclays.

23 THE COURT: Okay. I think we have Mr. Finn I see on
24 the screen.

25 MR. FINN: Yes.

1 Good morning, your Honor.

2 Andrew Finn on behalf of Standard Chartered Bank.

3 THE COURT: Okay.

4 MR. HOUCK: And Robert Houck from Clifford Chance
5 for defendants RBS.

6 THE COURT: Anyone else?

7 All right. So as everyone is aware, we are here to
8 kind of recenter ourselves, if nothing else, after all of the
9 events from the last couple of years, which have included this
10 case going up to the Circuit and then various other related
11 cases going before both the Circuit and the Supreme Court.
12 Interestingly enough, the Twitter v. Taamneh; T-A-A-M-N-E-H.
13 I'm not quite sure how to pronounce it, but Taamneh, may be,
14 case was decided in May of this year. And so, these cases or
15 the collection of cases before me had been stayed pending the
16 Twitter decision, but that now has been resolved. So it's a
17 certainly an appropriate time to get together and discuss the
18 various issues about amendment dismissal, et cetera. And what
19 is the future of these cases.

20 Mr. Stephens, your case -- I'm sorry, Mr. Charest,
21 your case is obviously -- I think its been stayed throughout
22 or after it was joined or related to me, as I recall. Correct
23 me if I'm wrong.

24 MR. CHAREST: You are not wrong. It's been stayed.

25 THE COURT: Okay.

1 MR. CHAREST: Thank you.

2 THE COURT: But the effect of all of what's been
3 happening in Freeman 1, 2, cases and the Bowman cases
4 obviously has impact on your case as well.

5 Is that fair to say?

6 MR. CHAREST: So the procedural history on the
7 earlier case does not apply to us, but the -- my sense and my
8 mission here is just duck tailed in with the herd and then
9 amend along with everybody else and try to make that work.

10 THE COURT: Okay. So let's talk about the proposed
11 amendment. I know, Mr. Osen, you had proposed what appears to
12 be two alternatives to how to amending with respect to Freeman
13 1 and 2 and then Bowman sort of collectively. And I think
14 option one was to vacate the dismissal in Freeman 1 and then,
15 I guess, allow amendment there. Or secondly, to allow Freeman
16 2 and Bowman plaintiffs to join Freeman 1 plaintiffs, aiding
17 and abetting claims.

18 Now, I may have misunderstood that, but tell me what
19 you're proposing.

20 And let me say one thing before I open the floor to
21 you. When I am puzzling over, and admittedly it's been awhile
22 since I focused on the rather complicated history of these
23 cases, is that as things stand right now, I've have dismissed
24 Freeman 1 case based on the conspiracy charges. And at the
25 time the case went up on appeal, I had said that there weren't

1 any aiding and abetting claims brought under JASTA in Freeman
2 1 and that had to do with the timing of JASTA being passed,
3 which occurred while the motions to dismiss were pending in
4 Freeman 1. And the Circuit essentially confirmed that aspect
5 of my ruling, which essentially was that there weren't any
6 aiding and abetting claims to be considered in Freeman 1.

7 And then, in Freeman -- and later after the Circuit
8 ruled, I did dismiss -- I shouldn't say that after the Circuit
9 ruled, but I think while the case was still pending, while
10 Freeman 1 was still pending before the Circuit, I dismissed
11 Freeman 2 and Bowman. And because those cases included aiding
12 and abetting claims, I specifically and expressly decided the
13 motion to dismiss as to aiding and abetting under JASTA, under
14 obviously the same exact circumstances as presented in the
15 Freeman 1 case or essentially the same circumstances.

16 So I guess what I'm puzzling over is, why would
17 amendment be appropriate in any of these cases since in effect
18 I think the idea of amendment would be to bring these aiding
19 and abetting charges, which I've effectively ruled on -- and I
20 anticipate what you're going to say in part is somehow the
21 Circuit's decision in Honickman; which is H-O-N-I-C-K-M-A-N,
22 and may be Twitter, somehow have changed standard such that
23 the Freeman 2 and Bowman cases and even Freeman 1, if they
24 were amended would survive a motion to dismiss even as to the
25 aiding and abetting claims.

1 So I know that was a little bit disjointed, but tell
2 me what you're thinking about in terms of amendment with that
3 understanding of why I'm confused about why any amendment
4 might be appropriate in any of those cases?

5 MR. OSEN: Sure. Thank you, your Honor.

6 I think we largely agree with your sort of summary.
7 I think -- well, there are two ways we could approach this
8 sense of clarity as a bit challenging given the history you
9 made out. Our proposal is basically in three-fold or three
10 steps. And I will, I promise, address the sort of the
11 futility argument or question that you raised.

12 So the first thing that we think would make sense
13 would be to file a motion and consolidate Bowman and Freeman
14 2. And that's just a housekeeping thing so that we don't have
15 a single plaintiff case sort of tail wagging the dog as it
16 were. And then, the second would be to have the Court grant
17 us leave to amend that consolidated Bowman/Freeman 2 claim.
18 For the reasons your Honor has stated, I think your Honor's
19 decision in Freeman 2 predated both the Second Circuit's
20 decision in Kaplan v. Canadian Bank and the Honickman
21 decision. Your Honor cited the lower court decision in Kaplan
22 three times and Honickman, I believe, 16 times in the Freeman
23 2 decision. And so, those were effectively overruled by the
24 Circuit. In the case of Kaplan, the decision was reversed.
25 And Honickman was affirmed on other grounds, but with the

1 legal standard and holdings of the district court first.

2 So we think that there's an entirely different
3 playing field than there was when your Honor ruled in Freeman
4 2. And in fact, when your Honor subsequently ruled on the
5 Bank Saderat aiding and abetting claim, Kaplan and Honickman
6 had not yet been decided by the Circuit, but your Honor relied
7 upon the part on the decision by Judge Amon in the Barclay v.
8 GBL case which had come out interim. So clearly there's been
9 sort of a C-change in the law on aiding and abetting or at
10 least the interpretations by various courts and how to apply
11 it.

12 And as your Honor eluded to a moment ago in Twitter
13 v. Taamneh, the Supreme Court further affirmed in our view the
14 broader principles annunciated in Kaplan and Honickman, which
15 is to say that, broadly speaking, the touchstone of liability
16 for aiding and abetting under JASTA is foreseeability.
17 Whether the criminal conduct of the defendant relative to the
18 entries sustained by the plaintiff, whether that was a
19 foreseeable risk of conduct in which they engaged. So
20 obviously it's very different than the sort of free Taamneh,
21 free Kaplan template, which existed when your Honor back in
22 Freeman 1 was relying principally on the Rothstein v. UBS
23 paradigm and primary liability. There's been a lot of water
24 under the bridge as your Honor eluded to, but not just the
25 pandemic but a series of cases that have come down since then.

1 So with respect to Freeman 2/Bowman, obviously
2 there's no final judgment entered in those cases. The Second
3 Circuit's decision over the last couple of years as well as
4 the Taamneh -- the Twitter v Taamneh case provided both the
5 parties and the Court far more guidelines just on the aiding
6 and abetting liability. And more broadly speaking obviously,
7 Rule 15 amendment is generally supposed to be liberally
8 granted. So we think as far as Freeman 2 and Bowman is
9 concerned, there's really no question about our right to amend
10 and to have the case decided on its merits based on the
11 current state of the law. And, of course, nothing in that
12 would preclude the defendants of course from moving to dismiss
13 and, you know, making the arguments I'm sure you'll hear. So
14 that's sort of the things we have on the Freeman 2/Bowman side
15 of things.

16 And then, let me just add one wrinkle because one
17 question would be, of course, from your Honor about timing.
18 And part of what we envision in amending Freeman 2/Bowman or
19 consolidated case, if your Honor goes that way, would be to
20 ask the district court in Bartlett to allow us to incorporate
21 certain information we gathered from third-party subpoenas in
22 that case and to include them in some form under seal or
23 redacted form in a Freeman consolidated amended complaint.
24 And so, there might be some question of when that actually
25 gets sort of resolved before the Bartlett court in terms of

1 what the process would be for sealing that kind of
2 information, but broadly speaking, we would hope to file, if
3 your Honor allows us, to do so within 90 days, baking in the
4 timely update before Magistrate Judge Merkl and sealing things
5 in Bartlett.

6 THE COURT: Okay. Who has the Bartlett case? Which
7 district court judge?

8 MR. OSEN: Judge Amon.

9 THE COURT: Oh, that's right. We talked about that
10 decision.

11 Okay. But you said there were two stages. I got
12 two, which is one, consolidate Bowman and Freeman 2, second
13 stage would be amend in that consolidated case. And then
14 third, what about Freeman 1, I guess, generally.

15 MR. OSEN: Right. That's the third.

16 THE COURT: Okay.

17 MR. OSEN: That's the -- and that is, as we said in
18 our prior letters, that we -- the procedural remedy would be
19 vacatur pursuant to Rule 16(b)6), and for leave to amend.
20 And, of course, if that were granted, then we'd probably move
21 to consolidate the three complaints into one.

22 THE COURT: I got it.

23 MR. OSEN: Essentially, the Freeman 1 amended
24 complaint would retrack whatever we submit in Freeman 2.

25 THE COURT: Okay. All right. Let me just turn very

1 briefly to you, Mr. Charest, right?

2 MR. CHAREST: Charest.

3 THE COURT: Yes.

4 Let me ask how what you're envisioning the next
5 steps to be for Stephens and how any of what we're discussing
6 might affect that. And then obviously I'll hear from some of
7 the defendants.

8 MR. CHAREST: Sure.

9 So the amendments we have in mind are just like what
10 Mr. Osen described, which is to both address the current state
11 of the law, but also to the extent we can get access to the
12 third-party subpoena information and present it in a way that
13 is complaint with the other court's rulings on, you know,
14 confidentiality and whatnot and to add those additional facts
15 as well. So it's both to address the legal standards, but
16 also to add new facts because there's been a few years, right,
17 since we filed the original complaint.

18 THE COURT: Okay. So you essentially seek to amend
19 as well along the same lines that Mr. Osen is discussing?

20 MR. CHAREST: Yes. That's correct, ma'am.

21 THE COURT: Okay. And remind me, I'm so sorry, you
22 had obviously different plaintiffs, but do the facts emanate
23 from the same set of circumstances?

24 MR. CHAREST: They're different in tax, but the same
25 on the defendants perspective. My perspective and the defense

1 perspective is the same. The defendants might disagree. You
2 know, what we try to do is track the -- sort of the non-attack
3 aspects from the Freeman 1.

4 THE COURT: Essentially the theory being that the
5 defendants aided and abetted elements of Iran in funding
6 terrorist sponsored attacks in Iraq; is that correct?

7 MR. CHAREST: Yes, ma'am.

8 THE COURT: Okay. All right.

9 Now, I'll open the floor to defendants. But may be
10 in order to do this in an orderly fashion, how about I call
11 out the different defendants and see if you want to respond.

12 So I'll start with HSBC, which is I think is
13 Mr. Hanchet, and I apologize if I mess it up, and Mr. Hamburg.

14 MR. HANCHET: Yes, your Honor.

15 It's Mark Hanchet for HSBC.

16 And the defendants met recently, at least initially,
17 we like Mr. Boccuzzi to address these issues.

18 THE COURT: Terrific. I appreciate it.

19 So Mr. Boccuzzi. And then if anyone else wants to
20 add anything, you'll let me know.

21 MR. BOCCUZZI: Thank you, your Honor.

22 Good morning.

23 So I guess just to go through the three legs. On
24 Freeman 1, we don't think that there's an available remedy for
25 a motion to amend or reopen. The Second Circuit explicitly

1 affirmed your Honor's conclusion that the aiding and abetting
2 claims had been forfeited in this case. The plaintiff are
3 seeking cert in the Supreme Court, but not on that issue. So
4 that issue I think is now foreclosed and done just based on
5 res judicata in the like. As to the surreptition relating to
6 the conspiracy theories, the defendants are opposing that in
7 July, and I think we'll have an answer from the Supreme Court
8 on the surreptition after the first conference in late
9 September or whenever that is. So I think Freeman 1 is really
10 done for purposes of any further proceeding.

11 And then, on Freeman 2, while you know, plaintiff
12 stressed Honickman and Kaplan, I think he seriously
13 underplayed the importance of Twitter or Taamneh or how you
14 would refer to that case going forward, but that did several
15 important things that I think basically foreclosed and will
16 demonstrate the futility of the proposed pleading because
17 importantly it trained on the need to make, you know,
18 plausible allegations tying the defendants conduct to the
19 specific act that injured the plaintiff as opposed of -- by
20 the idea of aiding and abetting some transcendent enterprise.

21 And, of course, even here we're removed from the
22 enterprise of any FTO because the OFAC violations that all
23 these claims are based on are in connection with, you know,
24 Iran, et. cetera. So we're already another step removed,
25 further removed, from the, you know, facts of Twitter, which

1 were held not to sustain a claim. And there, of course, the
2 allegations that Twitter was actually interacting with the
3 FTOs in those matters that have done various attacks. And
4 then, also the decision in Twitter was very clear about the
5 scienter standard being quite demanding and (videoconference
6 interruption) requiring intent to facilitate again the act
7 that caused the injury and not to engage in OFAC violations,
8 et cetera.

9 And then, the Court was also very, I thought -- I
10 don't know the word, but helpful or explaining sort of what we
11 are all scratching our heads over with that Halberstam
12 (phonetic) case and trying to translate into this world the
13 facts of a married husband and wife couple, who were a burglar
14 and his wife at home or may be common law spouse, and sort of
15 saying you can't just cookie cut that onto what are very
16 different and much more attenuated facts and sort of saying
17 you got to sort of apply those factors in a way that's
18 consistent.

19 So we think, you know, all that -- and clearly to
20 the extent there's any looser language in say Honickman, when
21 I know the plaintiffs can point to the general awareness
22 language, that's clearly tightened up now by the Twitter case
23 and I don't think save these complaints. So we think there's
24 going to be a futility problem.

25 And obviously we're in an odd posture here because,

1 you know, I guess but for plaintiffs not following fully or
2 completing what the Court instructed them to do in terms of
3 finishing up what the damages inquest as to Saderat, we
4 probably would have had final judgments and these cases might
5 have been in the Circuit, but I guess now based on that sort
6 of oddity in the record we're still sort of before your Honor.
7 And so, we've got this -- you know, some new cases that came
8 along, but I think, you know, may be whereas Honickman and
9 Kaplan, there might have been some arguments. I really think
10 thing are foreclosed now based on Twitter.

11 THE COURT: Mr. Osen, did you want to respond at all
12 because to one at least more in terms of managing the next
13 steps, I have a pretty clear idea. And so, you don't need to
14 get too much into the substance of arguing the issues, but if
15 you wanted to add anything about how best to proceed, go
16 ahead. I was going to make a proposal in terms of laying out
17 some briefing schedule and some timelines based on what both
18 sides have said. And the same is true for you, Mr. Charest.

19 Mr. Osen, did you want to say anything further?

20 MR. OSEN: Sure.

21 Thank you, Your Honor.

22 Just two things and I promise I won't litigate the
23 entire decision this morning, but obviously that case as the
24 Court described it involved passive nonfeasance. The failure
25 to remove content rather than active conduct. And the Court

1 explicitly said that the kind of conduct that aiding and
2 abetting liability for a campaign of terror attacks would be
3 something pervasive and systemic. That's the Court phrase.

4 We would submit that this is an apparent and dynamic
5 example of pervasive and systemic conduct over the course of a
6 decade involving hundreds of billions of dollars. So again,
7 without going into the entirety or preview of each sides
8 motions, I'll stop there.

9 With respect to the vacatur issue, I think it's
10 important. And just very briefly to sort of refresh
11 everyone's recollection because it's been four years since
12 that faithful October 2019 hearing, but in that hearing your
13 Honor expressly stated that you are not going to preclude the
14 plaintiffs from amending their complaint with respect to aid
15 and abetting liability under JASTA. And that's at page 45,
16 line six to nine of the transcript.

17 And then, you also discussed with us consolidating
18 the three Freeman cases with the idea that the parties might
19 come to some agreement about a stipulated dismissal to allow
20 all three cases to go before the Circuit at the same time.
21 And lastly to that end, you told the plaintiffs time to appeal
22 so that we could work out a consolidated amended complaint
23 that would include JASTA claims consistently or all that is
24 JASTA aiding and abetting claims for all three complaints,
25 including Freeman 1.

1 And then, as your Honor may recall, on November 25,
2 2019, you issued a minute order that came out because of the
3 Deng decision, D-E-N-G, in the Second Circuit, which suggested
4 that you didn't have the opportunity or the authority I should
5 say to call the time for appeal.

6 THE COURT: Right.

7 MR. OSEN: And then suggested that given -- the
8 plaintiffs might wish to notice their appeal, which was about
9 36 hours later. So we filed the Freeman 1 appeal under very
10 unusual procedural circumstances. And it's our view that's
11 precisely the kind of circumstances that vacatur -- we leave
12 to amend are appropriate for. And again, without previewing a
13 motion for vacatur, there's a six-part standard of grounds to
14 deny vacatur, undue delay, bad faith, dilatory motive on the
15 part of the -- repeated failure to cure deficiencies
16 previously allowed, undue prejudice to the party and futility.

17 So all we're asking for procedurally is the
18 opportunity to brief that given the unique circumstances and
19 the procedural history of Freeman 1. But that's, of course,
20 separate and apart from the Freeman 2 issue, which your Honor
21 stayed. And let me sort of further procedural wrinkle, I
22 apologize your Honor, but it's just the nature of the record
23 in this case. Is that we also had a separate issue going back
24 several years now with respect to one claim in the Freeman 2
25 pertained to CommerzBank. Which your Honor had said they had

1 held -- that they had waived their personal jurisdiction
2 objection and then we moved at that time, that was back in
3 2021, to amend just as to that claim, the Freeman 2. And
4 ultimately, your Honor, we agreed with the defendants -- your
5 Honor agreed to wait until the Freeman 1 Second Circuit
6 decision came out because it might address the aiding and
7 abetting question in that case. So that was held in abeyance.
8 But that claim against Commerzbank was for its role in
9 transferring funds to the very same entity that was at the
10 center of the Kaplan Second Circuit decision.

11 So it's a complicated back story and procedural
12 history, but I don't think that it's accurate to state that
13 Freeman 2 remained opened because we failed to pursue our
14 claims for damages.

15 THE COURT: Against Bank Saderat?

16 MR. OSEN: Right.

17 THE COURT: S-A-D-E-R-A-T.

18 No, I recall the rather convoluted history of this
19 case and was refreshing my memory just before we started the
20 proceeding, I was revisiting, in fact, my comment at the
21 October 28th oral argument that was in 2019. And to be
22 perfectly honest, I think what I had intended to convey was
23 that, and this was exactly what I said, I am not going to
24 preclude the plaintiffs from amending if we get to that point,
25 and I'll discuss that later, their complaint with respect to

1 aiding and abetting liability under JASTA.

2 And to be frank, I was really envisioning, when I
3 said if we get to that point, or trying to anticipate if the
4 case came back to me because the Circuit reversed me on my
5 denial or dismissal, rather, of the conspiracy decision.
6 Sorry, the conspiracy claims. Which was really the thought in
7 my head albeit not particularly well expressed, that's why I
8 added the, if we get to that point. What I didn't think about
9 or think through perhaps, was the fact that we had these other
10 related and potentially consolidatable, and I do agree
11 everything at some point should be consolidated or should have
12 been consolidated, I wasn't really thinking about the fact
13 that those were still out there and might provide some avenue
14 via consolidation to reintroduce or introduce, rather, the
15 aiding and abetting claims with respect to Freeman 1. But,
16 it's not particularly relevant, I think, because the legal
17 issue I think at this point is what, if any, authority I have
18 after the Second Circuit basically found waiver in effect with
19 respect to the plaintiff's in Freeman 1 bringing an aiding and
20 abetting claim. And I think that's the stickier issue
21 regardless of what I said in October 2019.

22 But let me at least hear -- if you'd like to say
23 something, Mr. Charest, anything about how we should proceed
24 versus getting into the substance or merits of the arguments.

25 MR. CHAREST: Sure. I'm kind of a pragmatist in

1 this sense. Rather than having a fight about futility to get
2 permission to amend, since the defendants are certainly going
3 to file a motion to dismiss anyway, to one it just makes sense
4 to cycle through amend, our plaintiff can give you our best,
5 and then defendants have at rather than fight about should we
6 do that first, you know, and then have a second dismissal
7 fight again.

8 So, to me, it's just simpler, open the door, let us
9 in, let us say our peace and then we -- I mean, I always
10 remind myself we're talking about pleadings here. Everyone
11 already knows what the claims are. It's not like a real kind
12 of notice kind of issue. The question is, do we get the
13 chance to say our best facts, articulate our best thoughts,
14 and let them have a crack at it. So, to one, the question of
15 should you be able to amend or not is an easy yes because
16 they're going to move to dismiss anyway. And that's as to my
17 guys. I can't really speak to the procedural issues on
18 Freeman obviously. That's not my -- I think we're on the same
19 boat on amendment, but the Freeman 1 stuff I don't really
20 understand or weigh on personally.

21 THE COURT: Are you seeking to have your case
22 consolidated with whatever results from all this briefly,
23 let's just call it Freeman 2 and Bowman --

24 MR. CHAREST: Sure.

25 THE COURT: -- or do you just want it still to be

1 treated like a related case?

2 MR. CHAREST: I would be happy to be consolidated
3 for the purposes of discovery. I think it would be much more
4 efficient and then we can see how that goes. I think for the
5 trial, my ambition would be to not to try them together, but I
6 know -- I would take it one step at a time, which is to say,
7 for the purpose of discovery all pretrial issues, I think we
8 should probably be consolidated. Beyond that, I guess we have
9 to burn that bridge when we get to it.

10 THE COURT: What seems to make the most sense to me
11 after hearing from everyone is addressing first the question
12 of amendment and futility. Obviously the opposite sides of
13 that coin. And then, my only question, and I open the floor
14 again to all of you to give me your opinion, is whether or not
15 we simultaneously have you brief the vacatur issue with
16 respect to Freeman 1 or whether or not it makes more sense to
17 talk about amendment, because if I deny amendment on the basis
18 of futility, then there's no reason to discuss vacatur expect
19 for this nagging hanging bit about Commerzbank, but I don't
20 I'm actually not sure procedurally whether that defendant is
21 still, I think, survives in some sense any appeal just because
22 that issue was never raised. And I can't remember, I don't
23 think we resolved that question because it was stayed pending
24 the appeal on the claims against the other banks.

25 Is that your recollection, Mr. Osen, because I think

1 that's what you just said?

2 MR. OSEN: Yeah. I'm sorry, your Honor.

3 The issues is a little bit convoluted as you eluded
4 to. So I think -- let me try to rephrase it.

5 THE COURT: Wait. Before you say that though,
6 actually I'm rethinking what I just said though. If the
7 claims against Commerzbank are the same as every other
8 defendant, say Bank Saderat, then actually the dismissal of
9 the conspiracy claim would essentially moot the question about
10 jurisdiction that was raised before because the case would
11 still be closed for its failure to state a claim even if the
12 other issues were resolved and they were still in the case.

13 MR. BOCCUZZI: That's right, your Honor.

14 THE COURT: Who said that?

15 MR. BOCCUZZI: Sorry. That was counsel for
16 Commerzbank.

17 THE COURT: Yes, Mr. Boccuzzi.

18 So I raise that question, but now that I think about
19 it, I'm not sure that little wrinkle matters in terms of
20 deciding should we address amendment first and then -- in
21 other words, proceed serially and then address whether Freeman
22 1 should be revived or reopened and then consolidated or does
23 it make sense to simultaneously brief them? And this is
24 obviously, each side is going to weigh the likelihood they are
25 going to win or lose, but I'd be interested in hearing first

1 from you Mr. Osen on that.

2 MR. OSEN: To be clear, before I get to that, let me
3 respond. It is a specific claim for relief that is different
4 from the other aiding and abetting claims. It involves the
5 allegations that the CommerzBank provided services to the
6 Shaheed Foundation or Mortars Foundation --

7 THE COURT: That's right.

8 MR. OSEN: -- that belongs to Hezbollah. So again,
9 how that is affected by the Circuit's prior rulings and by the
10 Twitter and Supreme Court case is a separate question, but in
11 terms of that it being of a different type than the other
12 claim, it certainly is. Our view --

13 THE COURT: Pause for one second for the court
14 reporter.

15 C-O-M-M-E-R-Z. B-A-N-K. All one word.

16 Go ahead, Mr. Osen.

17 MR. OSEN: Sure.

18 And so, our proposal was to -- was to brief and
19 submit the amendment -- the proposed amendment in roughly
20 90 days per the Freeman 2, Bowman cases, and I guess also for
21 Mr. Charest -- Stephens's case. And then, 30 or 45 days later
22 submit as to vacatur and lead to amend.

23 And our thought process was as follows: Your Honor
24 can ultimately decide -- if you decide the issue seriatim
25 rather than together, then that's up to you, but what it

1 affords us is an opportunity to do two things. One, is to
2 focus on amending the complaint as a standalone project and
3 then deal with the vacatur issue when it can have our full
4 attention. And two, it gives us an opportunity to put forth
5 our record on vacatur, just so we have it. And again,
6 whatever your Honor decides, vacatur is within the Court's
7 discretion. So it just gives us both an opportunity to sort
8 of space it and time it more efficiently. And in the end,
9 whether you decide them jointly or, you know, or separately is
10 entirely up to the Court.

11 THE COURT: Right.

12 Well, I was thinking actually more about the use of
13 everyone's resources. So obviously, if you brief things
14 simultaneously, then you will expend those resources for the
15 briefing no matter how I rule or how I decide to rule.
16 Whereas if we do it serially, I decide the amendment issue
17 first, it might have the effect, depending on how I rule,
18 saving people work on briefing the vacatur issue because in
19 effect that would be largely mooted.

20 And Freeman 1, that would be addressed separately.
21 It might still survive with respect to the Saderat claims,
22 Bank Saderat, because that's a question of default judgment
23 being sought. And then CommerzBank, as you mentioned, that is
24 a separate claim in terms of the facts. And it wasn't and it
25 hasn't been addressed at all by the Circuit. So that might

1 still survive as a standalone claims. But like I said, you
2 know, if I didn't require simultaneously or at least
3 contemporaneous briefing on both issues, it might save
4 everybody a little bit of work. That's all I was thinking.

5 But with that being said, let me turn to the
6 Defense, because the proposal from Mr. --

7 Oh, go ahead, Mr. Charest, what do you want to say?

8 MR. CHAREST: Yeah. I wanted to correct something I
9 said earlier, ma'am.

10 There has been no answer yet in our case so I
11 think --

12 THE COURT: Right.

13 MR. CHAREST: I can keep the amendment as a right --
14 just to point that out when the Court is thinking about the
15 process that's going down, I just wanted to make that clear.
16 My -- what I was trying to say was, to me it makes sense to
17 let everyone amend, but if there's going to be a fight about
18 futility and all that sort of thing, that's their fight. And
19 we're going to stand on the sidelines and, I guess, amend
20 anyway. I want to make sure I didn't misspeak when I said
21 that.

22 THE COURT: To me, the futility argument or the
23 motion over a leave to amend, they sort of collapse into a
24 motion to dismiss in effect. Though they have different
25 names, the same amount of the paper gets filed.

1 MR. CHAREST: That's exactly my point.

2 THE COURT: No. I'm with you on the practicality of
3 this.

4 What I'm wondering though from the Defense
5 perspective is whether a schedule of -- and this is what
6 Mr. Osen is proposing, giving them 90 day, and this would be
7 the plaintiffs in all the cases, to file their amended
8 complaints and then there presumably would be some time
9 shortly thereafter within the timeframe motions to amend by
10 the -- sorry, motions to dismiss by the Defense. And then,
11 while that's going on, Mr. Osen would move for vacatur of the
12 Freeman 1 judgment, I guess 45 to 60 days out, and then there
13 would be briefing of that. And so, they would run
14 simultaneously basically.

15 And then, let me turn to the Mr. Boccuzzi, even
16 though I view the filing of the motion to amend -- the filing
17 of the amended complaint and briefing over a leave to file a
18 amended complaint it essentially collapse to the same thing.
19 If you have a different view of that, feel free to express
20 that. But just give me your thoughts on the scheduling or
21 staggering of these different motions.

22 MR. BOCCUZZI: Sure.

23 On the amend/dismiss question, I think you're right.
24 There is a slight difference in the Stephens case there is a
25 right to amend. And whereas in Freeman 2 and Bowman, you need

1 to get leave to amend under Rule 15. And what I'm often been
2 seeing in other case, and I can't remember if we sort of
3 flagged this as a concept which would be in 90 days or
4 whatever we agreed on, Mr. Osen sharing his proposed amended
5 pleadings so defendants can consent to it going in. Basically
6 means, we don't see any other Rule 15 issue and it really is
7 your Honor saying collapsing into the futility/12(b) point.
8 Rather than, you know, upfront sight/unseen. You know, we
9 haven't seen any proposed amended complaint just saying, you
10 know, whatever the other grounds of Rule 15 giving those up
11 and really just turning into a 12(b).

12 So I would add in and other defendants may speak to
13 this, if I'm being too babyish, but I think that's a
14 legitimate thing we want to do and, you know, we could give
15 the answer and say, Okay. Now let's have a schedule on the
16 12(b) motions. And then, I have to think about it -- and
17 again, may be if other defendants have views on it the way
18 your Honor phrased it or sort of thinking about it, we sort of
19 get those motions on as it were about the sufficiency of these
20 pleadings, the amended pleadings, and then after that you deal
21 with the Freeman 1, because Freeman 1 -- the argument again is
22 Freeman 1. It is really a res judicata issue. I think what I
23 was hearing your Honor saying, depending on what you say in
24 the motion to dismiss, Freeman 2, that could also just mean
25 that there's really nothing to even talk about on that. I

1 think that's what your Honor was getting at.

2 THE COURT: Yes. That's what I was getting at.

3 It would be moot even if I thought the grounds for
4 granting vacatur would be valid. There still would be no
5 basis to revive or reason to revive or reopen Freeman 1
6 because there would be no claims that they could make that I
7 think would survive a motion to dismiss. Right.

8 I think at this point I have to say, and I apologize
9 if I'm cutting you off Mr. Boccuzzi, it probably just makes
10 sense to adopt some version of the schedule Mr. Osen said, but
11 I like the idea that plaintiffs sharing with the Defense and
12 not via filing it on the record. The proposed amended
13 complaints. And then you could style your motion either, I
14 guess, as a motion to, you know, deny leave to amend or as a
15 motion to dismiss. There are obviously some other issues that
16 would relate to a Rule 15 motion that don't relate to a Rule
17 12. So I'm not suggesting you have to waive, I guess, your
18 right to argue those, which is the impact of my just letting
19 them file the amended complaint. May be this is just
20 hyper-technical, but I think that's a good proposal on how to
21 deal with it.

22 And Mr. Osen or Mr. Charest, do you have any
23 objection to proceeding in that fashion just with respect to
24 the amended complaint?

25 MR. OSEN: I do, your Honor.

1 Because I think the -- whether it's the amended
2 complaint or the proposed amended complaint would have to be
3 on the record. Have to be on the docket in order for the
4 Court to be able to access it either way. So while the
5 defendants can give their consent, I think we can all
6 understand that's the unlikely to be given. And so, as a
7 practical matter, I think the proper way to proceed here is
8 either we file a leave to amend and attach the proposed
9 amended complaint just one way or as your Honor previously
10 suggested, we get the freely given leave to amend and they can
11 just move to dismiss.

12 THE COURT: All right. Why don't we do this, it's a
13 little bit hybrid, I guess, because we have two different
14 cases. So obviously Mr. Charest, you can file your amended
15 complaint without leave because no answer has been filed. Let
16 have you, Mr. Osen, file a motion for leave to amend and then
17 attach your proposed amended complaint in 90 day. And then,
18 obviously the defendants can respond. And it seems to me
19 futility will be the main reason to disallow it.

20 I do want to avoid though having a second bite of
21 the apple in other words. And then, a motion to dismiss,
22 should I deny the motion for leave to amend. And there could
23 obviously be different bases. I just want to prevent that
24 potential, but may be we just address that once the motion for
25 leave to amend is filed along with the amended complaint. But

1 I want at that point be as efficient as possible.

2 MR. OSEN: Your Honor, if I may just point out.

3 THE COURT: Yes.

4 MR. OSEN: Mr. Charest complaint would be -- I mean,
5 the result of that process would be is that Mr. Charest
6 plaintiffs would have the benefit of the Freeman 2 plaintiffs
7 work product, their knowledge from the Bartlett case and so
8 forth. That complaint would go forward. That is, it would go
9 forward for a motion to dismiss. There would be a question as
10 to whether the Freeman 2 plaintiffs could file the amended
11 complaint. It seems to me either way the defendant has to
12 brief a motion to dismiss. So why not just brief a motion to
13 dismiss, a consolidated motion to dismiss.

14 THE COURT: All right. Mr. Boccuzzi, do you have
15 any thoughts on that?

16 I mean, that's a fair point, I guess, given this --

17 MR. BOCCUZZI: The only issue is, your Honor, one
18 plaintiff has right to amend as a right and one doesn't. And
19 so, what I was proposing is, he shares the amended -- proposed
20 amended complaint. And then, the defendants can either say,
21 Look, we think you're going to need to make a Rule 15 motion,
22 which we'll oppose, and then we have all of our Rule 15
23 arguments. Or we could say, You know what, this seems like
24 it's going to be about futility. Why don't we consent to your
25 filing the amended complaint and we'll move against it and we

1 can move against Stephens the same time and a 12(b) .

2 So it's a way to sort of figure out where we are
3 because otherwise I think Mr. Osen is saying we should
4 sight/unseen consent to amendment where he doesn't have
5 amendment as a right.

6 THE COURT: I mean, I don't think he's requiring you
7 to consent. He's appealing to me by saying, given the unusual
8 circumstances of the case, I should just grant him leave to
9 amend or file an amended complaint regardless of your position
10 on it. I think that's essentially what you're, Mr. Osen,
11 correct?

12 MR. OSEN: That is correct, your Honor.

13 THE COURT: And if only to marry-up sort of the
14 postures of the two cases so they're essentially in the same
15 posture and everything being briefed in the context or under
16 the rules for a motion to dismiss. Yes. I mean, the 12(b)
17 standard rather than the Rule 15 standard.

18 You know, listen, I think there's some practical
19 appeal to that way to proceed. And I don't know if it's going
20 to have any great impact on the defense not to get a chance to
21 also file a Rule 15 motion. And candidly, I think there's no
22 question that you're going to file one. In other words, I
23 don't think there's anything you'll see in this amended
24 complaint that's going to cause you to think, Oh, we'll
25 consent to the filing of the amended complaint. Surely you're

1 going to move to deny leave to file that amended complaint
2 based on the futility grounds we've been discussing.

3 MR. BOCCUZZI: Right.

4 It's truly just a way of trying to figure out are we
5 just talking about futility, i.e.12(b) or are we talking about
6 any other grounds that the case law discusses in the context
7 of Rule 15.

8 THE COURT: But does anything come to mind given
9 that we all pretty much know what's happened before and what's
10 coming down the pipe?

11 MR. BOCCUZZI: I mean, the usual things people talk
12 about are delay and bad faith. So --

13 THE COURT: Yes.

14 MR. BOCCUZZI: -- and I just don't know what's going
15 to be in pleading. And so, that's why I sort of offered the
16 path of share it, we can then say what we're going to do one
17 way or the other, and then you'd see a promotion that way and
18 coordinate it with Stephens.

19 THE COURT: Let's do this: I am going to grant the
20 Freeman 1 plaintiffs request to file an amended complaint. I
21 don't recall what number it is at this point. May be it's the
22 second amended complaint. Mostly to coordinate and align the
23 two cases and have, I think, one set of briefing in the
24 posture of a rule 12(b)(6) motion, which I think really is the
25 heart of the dispute here. You could in theory argue delay or

1 bad faith, Mr. Boccuzzi, but I can guarantee you I wouldn't
2 grant any Rule 15 motion on that basis. Really what I'm going
3 to get to no matter what and no matter how it's styled is
4 whether or not plaintiffs, and now I'm talking about all the
5 cases, have sufficiently alleged aiding and abetting under
6 JASTA.

7 And in light of what the plaintiffs will -- are
8 claiming some kind of C change in the standard in which I
9 think the Defense are arguing is really nothing more than
10 clarification of the preexisting law. And again, I'm
11 paraphrasing everyone's arguments. So I just don't want to
12 unduly burden everyone, including myself and my law clerks.
13 So I'm just wanting to -- so I'm going to -- I'm granting
14 right now --

15 Go ahead, Mr. Boccuzzi.

16 MR. BOCCUZZI: When your Honor started, you said
17 Freeman 1. I assume you mean Freeman 2.

18 THE COURT: Oh, Freeman 2. I'm so sorry, Freeman 2
19 and Bowman.

20 Thank you.

21 Sorry about that. Yes, you are absolutely right.

22 So Freeman 2 and Bowman, leave is granted under Rule
23 15 to file an amended complainant. And then, obviously, the
24 defendants will have a right to move to dismiss. I think at
25 this point we'll dispense with any premotion conference

1 requirement. Just see if you folks can come up with an agreed
2 upon schedule for any motion to dismiss because I think at
3 this point the lines are pretty clearly drawn given the
4 history of the case and the discussion today. And then, I'll
5 give you another 60 days. So first is 90 days to file the
6 amended complaint and then 60 days to move to vacate the
7 decision or judgment in Freeman 1. This is all directed to
8 you, Mr. Osen.

9 MR. OSEN: Okay.

10 THE COURT: And Mr. Charest, you can have 90 days to
11 file your amended complaint as well in Stephens.

12 MR. CHAREST: Thank you.

13 THE COURT: You don't need leave from me for that.
14 You can obviously file it earlier, but if you coordinate the
15 timing I think it'll make it easier on the defendants to then
16 have a unified date for any motions to dismiss. I think they
17 should be omnibus unless you folks think there's some reason
18 to distinguish between the two of them.

19 I understand that from what Mr. Charest is saying is
20 that the theory of liability is the same even if the terrorist
21 events or acts differ. Only then in and of itself could make
22 some difference. Since obviously the question is aiding and
23 abetting the principle in some way. So if you folks decide
24 briefing the Stephens's plaintiffs -- the Stephens's case
25 rather separately from the Freeman and Bowman cases. That's

1 fine. I don't care if those end up being separate briefings
2 on motions to dismiss.

3 And then, with respect to the motion to vacate, how
4 much time would defendants want to respond on that?

5 Mr. Boccuzzi.

6 MR. BOCCUZZI: Sorry. I'm on mute.

7 So -- and just to be clear, it's 60 days after the
8 90 days?

9 THE COURT: No. I think 60 days from today.

10 Is that what you meant, Mr. Osen?

11 MR. BOCCUZZI: Oh.

12 THE COURT: You mean 60 after the 90?

13 MR. OSEN: Yes, your Honor.

14 THE COURT: Okay. So 150 days.

15 As far as I'm concerned, it's fine. As I said
16 before, it's the first issue I really have to wrestle with is
17 the amendment issue and it might drive a lot of the other
18 decisions. So we're talking 150 days out.

19 And Fida, hopefully you're doing your time
20 calculation.

21 But what do you think Mr. Boccuzzi?

22 MR. OSEN: The plaintiff and I --

23 THE COURT: What did you say?

24 MR. OSEN: I said it's a blink of an eye in the
25 context of this case so Mr. Boccuzzi -- we'd certainly give

1 defense counsel whatever time they need to respond.

2 THE COURT: Right.

3 MR. BOCCUZZI: Sorry, your Honor. I'm just trying
4 to look at the calendar because given how far, I don't even
5 know now, we're in the middle of Thanksgiving or Christmas.

6 THE COURT: Right. A little less than three months
7 out. So we're talking July, August, September.

8 Yes. So it is probably the middle of September --
9 about the end of September.

10 MR. BOCCUZZI: Because --

11 THE COURT: No. Go ahead.

12 MR. CHAREST: As a point of order, does it make
13 sense to may be have the defendants to start to move to
14 dismiss around that same 60 day window so that they're moving
15 to dismiss -- they're not necessarily related, I guess, is my
16 point. And so, 60 days later they move to dismiss at the same
17 time Mr. Osen files his motion to vacate or whatever and then
18 that briefing can, you know, swap timing wise until they all
19 come to an end roughly about the same time and go before the
20 Court.

21 THE COURT: Right.

22 What do you think, Mr. Boccuzzi, if the defendants
23 filed their 12(b)(6) motions on that 60 days out, which I
24 think is September 25?

25 MR. BOCCUZZI: Your Honor --

1 MR. OSEN: Your Honor, I don't think so.

2 MR. BOCCUZZI: I think September 25 is when the
3 amended complaint comes in.

4 THE COURT: You're actually right. I'm so sorry.

5 And 60 days from there should be then November 23 or
6 24. That might fall --

7 MR. BOCCUZZI: That's Thanksgiving.

8 THE COURT: So let's go into December then. The
9 first week in December.

10 MR. BOCCUZZI: So December 7th would be the motion
11 to dismiss the amended complaints in Freeman
12 2/Bowman/Stephens's?

13 THE COURT: Correct.

14 MR. BOCCUZZI: And then, on December 7th we would be
15 getting a motion to vacate the Freeman 1?

16 THE COURT: Correct.

17 And then we could perhaps align the responses to
18 those dueling motions or simultaneous motions. That's what I
19 think Mr. Charest is suggesting.

20 MR. BOCCUZZI: Okay.

21 THE COURT: Kind of like, you know, when you have
22 dueling summary judgment motions.

23 MR. BOCCUZZI: Right.

24 So then, the next thing would be his opposition to
25 the motion to dismiss and our opposition for the motion to

1 vacate?

2 THE COURT: Right.

3 And I suggest may be 60 days because it sounds like
4 it might be substantial briefing.

5 MR. BOCCUZZI: So then like around February 1?

6 THE COURT: Correct. Right.

7 And then, replies would be due 30 days out for each
8 of those respectfully.

9 MR. BOCCUZZI: So March 1.

10 THE COURT: Correct.

11 How does that sound, Mr. Osen and then Mr. Charest?

12 MR. CHAREST: Yes, for the Stephens's plaintiffs.

13 Thank you.

14 THE COURT: Mr. Osen.

15 MR. OSEN: Without reference to the calendar, the
16 timeframe sounds correct, assuming that none of those are a
17 Sunday or a Saturday. Yes.

18 THE COURT: Yes.

19 Mr. Boccuzzi.

20 MR. BOCCUZZI: I think this works. I would ask that
21 if any defendants -- I don't know if I ever set a schedule for
22 so many defendants all in one swoop. So I don't want to
23 foreclose anyone from pointing out a problem that I'm missing.

24 THE COURT: All right. You have a hand raised, yes,
25 from our colleagues in the -- let's guess. Hang on. Let me

1 guess. It's Mr. Hanchet.

2 MR. HANCHET: That is correct, your Honor. Yes.

3 Just one small feature. I have no problem with the
4 schedule that's been discussed on this call. However, I do
5 want to reminded Court that at the beginning of all of this,
6 Mr. Osen represented that one of the bases for amending his
7 complaint was obtaining the additional materials in the
8 Bartlett case from a Magistrate Judge in that case.

9 THE COURT: Right.

10 MR. HANCHET: It's not inconceivable to me that he
11 would not be able to obtain those materials within 90 days or
12 may be. I don't know, but that's just one variable in all of
13 this that I think the Court should factor in.

14 THE COURT: Well, I have a little bit of influence
15 in that regard. I certainly can talk to Mr. Judge Merkl and
16 just say, Hey, you know, if you could rule on this sooner
17 rather than later, that would be helpful because, you know, it
18 could bollocks up the works. Now, Judge Amon might also get
19 involved and that's a whole different cattle of fish. I can't
20 necessarily -- I certainly can talk to her. And I think I can
21 explain that their decision will affect our schedule. And I
22 don't think that will be a problem, but obviously if there's
23 some unexpected delay happens then we might have to adjust the
24 schedule period or revisit the question of whether or not
25 Mr. Osen can go ahead and amend without the benefit of that

1 evidence or information.

2 I guess the one thing I'm wondering about, Mr. Osen,
3 is when you say, unsealing, does it mean that they're not
4 allowed to use the information or reference it in any
5 complaint or versus being able to physically get the documents
6 or records unsealed so that you can provide them as part of
7 the discovery?

8 MR. OSEN: Well, I guess in theory both. If we ever
9 got to the discovery in this case, there's a protective order
10 in place in the Bartlett case. So the third-party defendants
11 records are subject to that protective order. The order
12 states that on motion the party can seek to use another
13 proceeding.

14 THE COURT: Oh, good.

15 MR. OSEN: The case law is pretty strong on the, you
16 know, on the efficiency of having the same evidence be used.
17 Especially since here the plaintiffs are not entirely, but
18 largely overlap with the Freeman 1, and two, and Bowman
19 plaintiffs. So we have possession of the same records for the
20 same plaintiffs, it's just a different case. So I think I'm
21 quite optimistic they will be available. The only question
22 will be, you know, the process by which that information is
23 put in a complaint. Because obviously, we could file such a
24 complaint in a redacted form, but the defendants have to have
25 the benefit of being able to see the allegations, which means

1 that either a protective order would be entered in this case,
2 which we didn't do because there's -- sorry --

3 THE COURT: Don't worry. Somebody just walked in.
4 That's all.

5 Go ahead.

6 MR. OSEN: There's been no discovery in Freeman. No
7 protective order in place. So either the defendants would
8 have to enter into a protective order in the next 90 days or
9 the defendants would have to sign the protective order in the
10 Bartlett case so they could have the information.

11 THE COURT: Well, certainly that second option seems
12 relatively easy to facilitate. And I would imagine the Court
13 in Bartlett would be agreeable to that. Given especially that
14 the protective order seems to contemplate that the information
15 could be used in other cases or shared at least in the -- for
16 purposes of other cases. And you're the plaintiff there and
17 obviously the plaintiff there.

18 So I don't foresee their being a problem with
19 somehow, whatever that form takes, using that information in
20 case and providing it to the defendants in this case. So
21 while I understand what you're saying Mr. Hanchet, and that
22 may, you know, change our schedule entirely. I'm optimistic
23 that this all could be worked out based on what Mr. Osen just
24 said.

25 MR. CHAREST: And in worse case, your Honor, the

1 thing that's going to get delayed is the trigger dates. Then
2 everything else can shift, if necessary. Hopefully we can get
3 it done. It's the Court on docket obviously. It's better to
4 have set dates that may move then worry about the first one.

5 THE COURT: Yes. I think that's fair.

6 MR. FINN: Your Honor, I think Mr. Osen might be
7 downplaying a bit perhaps we see --(videoconference
8 interruption)

9 THE COURT: I think everyone is having trouble
10 hearing you, Mr. Finn.

11 MR. FINN: Can you hear me now?

12 THE COURT: No. Not too well. Try again.

13 MR. FINN: I'm going to turn off my video.

14 MR. CHAREST: We can hear you, you're just quite.

15 THE COURT: May be just try yelling at the computer.

16 MR. FINN: Can you all hear me now?

17 THE COURT: A little bit better.

18 Go ahead.

19 MR. FINN: I put on a headset here.

20 Your Honor, I think that Mr. Osen might be
21 downplaying a little bit the complexities in Bartlett for our
22 client, Standard Charter Bank, obviously a defendant here, is
23 not a defendant in Bartlett, but was subpoenaed for
24 information extensively for that case. And, you know,
25 meanwhile we had a dismissal in this case, we produced

1 documents in that case on the understanding that they would be
2 used for that case. Again, we don't know exactly what
3 plaintiffs here are intending to use from that case, but, you
4 know, we obviously have to consider that because these are not
5 necessarily just disinterested third parties in Bartlett, who
6 happen to produce information. So again, we don't know
7 exactly what the plaintiffs are intending to use, but I do
8 want to flag that issue that may come up depending on the
9 specifics.

10 THE COURT: That's an interesting point. So while
11 you didn't have to produce those documents in this case, you
12 were required to produce them in Bartlett and now you see some
13 potential issue with having them essentially produced in this
14 case even though you're moving to dismiss this case once more.

15 Is that sort of the essence of it?

16 MR. FINN: Yes, your Honor.

17 And you know, as a third-party in Bartlett, the
18 understanding when we get a subpoena there that that would be
19 used for that case and not used as a basis three years later
20 to try to amend, you know, a dismissed complaint in another
21 matter.

22 THE COURT: Against you?

23 MR. FINN: Exactly.

24 THE COURT: Yes. Meaning, your client. I'm sorry.

25 That is an interesting wrinkle.

1 Mr. Osen, do you have any thoughts on that because
2 it is a little bit of a Twitter.

3 MR. OSEN: My only thought is I think the law is
4 pretty clear on the use of the materials. And, you know, we
5 don't un-know things that we learn in other cases. Certainly
6 the Bartlett case is not a stalking horse for discovery in
7 this case. This case was dismissed when Bartlett is continued
8 on and the Court there granted us discovery on the basis of
9 being stated in a claim matter. So I don't think there's a
10 legal question here. I understand that it is very sensitive
11 for Mr. Finn's client because without characterizing it
12 further, there are materials relating to various defendants in
13 their assistance to has been contained in some of those
14 records. Unsurprisingly because the case in Bartlett focusing
15 on his financing.

16 THE COURT: Let me ask you a question: Do you
17 anticipate using some of the information that Standard and
18 Charter provided in the Bartlett case in your amended
19 complaints, if you know?

20 MR. OSEN: Not exclusively Standard Charter.

21 THE COURT: Okay. Well, you folks obviously would
22 have to address that case. I don't know if you're involved in
23 that one as well, Mr. Finn, but you obviously are on notice
24 about what might be coming with respect to a motion to unseal
25 in Bartlett, at least limitedly, or to at least share in

1 Bartlett.

2 I guess if an issue arises that I need to address,
3 let me know. Otherwise, it seems like that might end up
4 getting resolved in the Bartlett case, potentially. I think
5 Mr. Osen has a point that, you know, if a party obtains
6 information in the context of one case, it doesn't really
7 preclude them, let's say, if they think it establishes other
8 liability against a third-party, I don't think, from using
9 that information against a third-party, even to bring an
10 action from the start as opposed to here may be using it in a
11 context of an already initiated action. I must confess, I
12 haven't really looked into this issue. So why don't you folks
13 see if there's going to be a problem in Bartlett and let me
14 know. And let everyone else know that you think that there
15 might be some protracted litigation over this.

16 Anyone else in a similar situation to Mr. Finn's
17 claim?

18 All right. So here are the dates:

19 The amended complaint should be filed by
20 September 25, 2023, the motions to dismiss should be filed by
21 February 7, 2024.

22 THE COURTROOM DEPUTY: That's December 7th, Judge.

23 THE COURT: Sorry. My handwriting is bad,
24 December 7, 2023. And actually I'll talk about bundling in a
25 minute. December 7, 2023 for motions to dismiss. And then,

1 similarly, December 7, 2023, for the motion to vacate from
2 Mr. Osen and that's in Freeman 1. And then -- and I should
3 have been clearer, the amended complaints are in the Stephens
4 case and then the Freeman 2 and Bowman case, and as on the
5 motions to dismiss. And then, February 1, 2024 for the
6 oppositions both for the -- let me think about this. Yes.
7 Both for the motion to vacate and then the motions to dismiss.
8 And the motion to vacate will be in Freeman 1. And with
9 respect to the motions to dismiss it will be in Freeman 2 and
10 Bowman. And then, finally replies on March 1, 2024 in the
11 respective cases on the respective motions.

12 Now, as you may or may not know, I encourage or ask
13 the parties if they can without filing any other existing
14 deadline, like a statutory deadline, follow the bundling
15 practice, which mean, only file your respective briefing on
16 the last date. So that would be March 1, 2024, with respect
17 to all of the motions that are being proposed. The motions to
18 dismiss and also the motion to vacate.

19 And as I've explained before, perhaps to you folks
20 even, that allows me to be more liberal with granting
21 extensions if they are requested by the parties because I have
22 internal deadlines for ruling on motions and they are
23 triggered by the filing of the motion itself. So once that
24 clock starts running, it's harder for me to give you more time
25 to brief your motions because it eats into the time I have to

1 resolve them.

2 All right. Mr. Osen.

3 MR. OSEN: One minor request, your Honor, I think
4 the initial deadline for the amended complaint was
5 September 25th.

6 With the Court's indulgence, we would ask for one
7 additional day since I believe the 25th is Yom Kippur.

8 THE COURT: Oh, sorry.

9 Okay. We should fix that.

10 You want it afterwards, I assume?

11 MR. OSEN: Yeah. Just the next day would be fine.

12 THE COURT: Okay. Yes. Absolutely.

13 So we'll make it September 26th.

14 Is that still during the week and not a weekend,
15 right?

16 MR. BOCCUZZI: Tuesday.

17 THE COURT: Tuesday. Okay. Perfect Tuesday.
18 That's better.

19 MR. BOCCUZZI: Excuse me, your Honor.

20 THE COURT: Yes.

21 MR. BOCCUZZI: So on the bundling that just means on
22 the different dates prior to March 1, people are just serving
23 each other and then it all gets filed at the end.

24 THE COURT: Correct.

25 And then, the only thing we do ask you to file is

1 the letter, your cover letter, when you serve it. File your
2 cover letter on the docket so that we'll know that you
3 complied with the deadlines. And I say, filed, it's not
4 treated as a motion. Just file it as a docket entry. you know
5 as a docket entry.

6 MR. BOCCUZZI: I see.

7 It's a letter from one party to other and then
8 CC-ing the Court.

9 THE COURT: Exactly. Just memorializing the fact
10 that you have served the other side.

11 MR. BOCCUZZI: And then, I can't remember in the
12 past, I think it wasn't baked into the order, it was just left
13 to when paper start getting filed like the amended complaint,
14 if the parties want to negotiate extended pages. We would
15 just agree to that ask your Honor.

16 THE COURT: Exactly.

17 MR. BOCCUZZI: And expand on extended pages as we
18 go?

19 THE COURT: Exactly.

20 MR. BOCCUZZI: Thank you, Your Honor.

21 THE COURT: All right. Good.

22 Any other questions from anyone else?

23 MR. CHAREST: I think strictly speaking, we're still
24 stayed in that -- I think probably from the Defense
25 perspective they want that so they don't get into any kind of

1 default issue, but I'm not sure for them. It seems to me we
2 should stay until that.

3 THE COURT: You mean until the filing of your
4 amended complaint?

5 MR. CHAREST: Yes, ma'am.

6 The order of the date and then I guess we're going
7 to stay, but I'm just thinking in my head about the other
8 aspects of it.

9 THE COURT: That's fine.

10 I mean, I guess, we'll just indicate that the stay
11 is in place until the filing of the amended complaint, which
12 should occur on September 26th.

13 MR. CHAREST: Thank you.

14 Just a little housekeeping.

15 THE COURT: No. No. It makes sense actually. I'm
16 sure the Defense appreciates that.

17 Okay. Now, do we want to set a date for Freeman 2
18 and Bowman -- oh, to move to consolidate. Let's see -- that's
19 right, I guess.

20 We didn't address the motion to consolidate. Let's
21 just see where we are, I guess, with respect to the claims
22 themselves because effectively, I think, Mr. Osen you're going
23 to brief it as if Freeman and Bowman are consolidated. It's
24 really the same argument.

25 MR. OSEN: Right. If there's no objection, we would

1 simply file a motion next week to consolidate Bowman and
2 Freeman 2.

3 THE COURT: Yes.

4 MR. OSEN: And then, we would only file one amended
5 Freeman 2 complaint.

6 THE COURT: I think.

7 MR. OSEN: We just don't want to clutter your
8 docket.

9 THE COURT: Actually, in that vein, why don't -- I
10 can ask the defendants, is there any objection to
11 consolidating Bowman into Freeman 2 and then everyone just
12 file their submissions in Freeman 2?

13 This is really just administrative. I don't see any
14 reason not to.

15 Anyone object to that from the Defense perspective?

16 I'll just grant it and you don't even have to file a
17 letter.

18 Mr. Boccuzzi or anyone else on the Defense side?

19 MR. BOCCUZZI: Sorry. I'm just thinking if there's
20 any reason why we would want to see the amended pleadings on
21 the 26th before -- if that could ever raise any issue as to
22 the consolidation.

23 THE COURT: I haven't looked at the complaints in a
24 while, but Mr. Osen, remind one. I remember why you filed
25 Freeman 2, that had to do with statute of limitations.

1 Are there any differences, material differences,
2 between Bowman and Freeman 2? I think it's just different
3 plaintiffs alleging all the same things, right?

4 MR. OSEN: It was just one additional plaintiff
5 whose time to file was expiring so we filed it as a exact
6 replica, but for one plaintiff.

7 THE COURT: You know, I don't want to force the
8 defendants to agree to something if they want to take another
9 look. So why don't, just the Defense, let me know in a week
10 if you have an objection to the consolidation. You don't have
11 to file anything Mr. Osen. If there's no objection, as
12 indicating by the filing of defendants, then you can do it
13 collectively if you like. Then we'll go ahead and grant it.
14 If there's some reason raised, then you'll respond that
15 Mr. Osen.

16 MR. OSEN: That's fine.

17 MR. BOCCUZZI: Your Honor, A week from today is
18 July 4th --

19 THE COURT: Yeah. Let's just make it July 5th.

20 MR. BOCCUZZI: Okay. Thank you, your Honor.

21 THE COURT: Okay. Terrific.

22 All right. Good.

23 So I think that resolves everything we need to as of
24 now. You folks have your work cut out for you. We'll hear
25 from you, I guess, in the September at the earliest except for

1 this submission in a week just to let us know about
2 consolidation.

3 Anything else before I let you go?

4 Mr. Osen.

5 MR. OSEN: Nothing your Honor.

6 THE COURT: Mr. Charest.

7 May be I'll get your name right.

8 MR. CHAREST: Nothing from Stephens.

9 Thank you.

10 THE COURT: Mr. Boccuzzi.

11 MR. BOCCUZZI: Nothing your Honor. Thank you.

12 THE COURT: Any other defendant want to say anything
13 at this time?

14 Good. Hearing none, everyone have a good holiday
15 and we'll hear from you soon enough, right.

16 Thank you.

17 MR. OSEN: Thank you, Your Honor.

18 MR. CHAREST: Thank you, Your Honor.

19 MR. BOCCUZZI: Thank you, Your Honor.

20 MR. FINN: Thank you, Your Honor.

21 (Whereupon, the matter was concluded.)

22 * * * * *